IN THE COURT OF APPEALS OF IOWA

No. 9-066 / 97-1748
Filed April 30, 1999

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JACKIE LINN HAUT,

Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, E. Richard Meadows, Jr., Judge.

Defendant appeals her convictions and sentences, following a jury trial, for forgery, driving while barred, obstructing prosecution, malicious prosecution, and driving under suspension. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

Linda Del Gallo, State Appellate Defender, John P. Messina, Assistant State Appellate Defender, and Ryan Rohlfsen and Gretchen Jensen, Legal Interns, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Victoria Siegel, County Attorney, and Kenneth A. Duker, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Zimmer, JJ.

SACKETT, C.J.

Defendant-appellant Jackie Linn Haut was stopped for speeding and allegedly identified herself as another person. She subsequently was charged and found guilty, after a jury trial, of forgery in violation of Iowa Code sections 715A.1 and 715A.2(1)(b) (1997), driving while barred in violation of sections 321.560 and 321.561, obstructing prosecution in violation of section 719.3, malicious prosecution in violation of section 720.6, and driving under suspension in violation of section 321A.32. Defendant appeals contending her trial attorney was not effective because (1) she did not object to jury instructions defining obstructing prosecution and malicious prosecution; and (2) she did not move for a judgment of acquittal on the forgery, obstructing prosecution, and malicious prosecution charges. We affirm in part, reverse in part and remand for a new trial.

On September 24, 1996, Officer Jeffrey Williams stopped a woman driving a brown Oldsmobile for speeding. The officer asked the driver, who he was later to identify as the defendant, for her driver's license. She said she did not have her license with her and identified herself as Julie Wilkins, living at 205 Pleasant Street. The officer asked for her social security number and she said she did not know it. When asked for her birth date, she said she had a birthday a few days earlier, and later said her birth date was September 18, 1969. The officer checked Wilkins' license record and verified her birthday was September 18, 1969. The officer then issued a citation to a Julie Wilkins for speeding and for not having her driver's license in her possession. The citations were delivered to defendant, who signed as Julie Wilkins.

Three months later, Julie Wilkins was notified her driver's license would be suspended if she did not pay the citations issued on September 24, 1996. She contacted the Wapello County Attorney's Office and told them she had not been stopped for speeding on September 24th and had not received the citations. Wilkins had a suspicion defendant, her neighbor, may have been the person the officer stopped. The charges against Wilkins were either expunged or dismissed.

A month later, Wilkins received another letter concerning suspension of her license. When she again complained, Officer Williams went to defendant's home. He recognized defendant as the person he had cited and he also recognized the brown Oldsmobile in the driveway as the one defendant was driving when stopped.

Defendant was charged by trial information with the numerous offenses on which she was ultimately found guilty.

At trial, it was stipulated on September 24, 1996, defendant was barred from driving and was required to have an SR-22 on file showing she was insured but she did not. Following the jury's finding defendant guilty on all counts, she was sentenced to concurrent one-year terms of incarceration on each of the five counts, with all but ninety days suspended, and placed on probation. Defendant was also ordered to pay a $500 fine on each of the counts of forgery, driving while barred, and obstructing prosecution, and a $250 fine on each of the counts of malicious prosecution and driving under suspension.

Defendant first contends her trial attorney was not effective in several particulars. In order for defendant to establish her trial counsel was not effective, she

must show (1) counsel's performance fell outside a normal range of competency, and (2) the deficient performance so prejudiced the defendant as to give rise to a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *Kane v. State*, 436 N.W.2d 624, 627 (Iowa 1989); *State v. Losee*, 354 N.W.2d 239, 243 (Iowa 1984). An attorney is presumed to be competent, and the defendant has the burden to prove by a preponderance of the evidence the attorney was not. *See Kane*, 436 N.W.2d at 627. Improvident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily amount to ineffective assistance of counsel. *Id.*; *Hinkle v. State*, 290 N.W.2d 28, 34 (Iowa 1980).

Claims of this sort are generally reserved for postconviction relief but may be considered on direct appeal if the record is sufficient for us to decide the issue. *See Kane*, 436 N.W.2d at 627; *State v. White*, 337 N.W.2d 517, 519 (Iowa 1983).

Defendant, to be successful, must prove both incompetent representation and prejudice before succeeding on a claim of ineffective assistance of counsel. *See Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

Defendant first contends her trial attorney was not effective when she failed to object to the jury instruction defining the crime of obstructing prosecution, defined under Iowa Code section 719.3 as:

> A person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of the following acts, commits an aggravated misdemeanor:

> 1. Destroys, alters, conceals or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.
>
> 2. Induces a witness having knowledge material to the subject at issue to leave the state or hide, or to fail to appear when subpoenaed.

Iowa Code § 719.3(1), (2).

The challenged instruction said:

> 1. On or about the 24th day of September, 1996, the defendant made available false evidence or furnished false information.
>
> 2. The defendant provided the evidence or information with the specific intent that it be used in the trial of the case.
>
> 3. That the defendant provided the evidence or information with the specific intent to prevent the apprehension or obstruct the prosecution of any person, including the defendant.

Defendant advances under section 719.3(1) a person is guilty of obstructing prosecution if he or she "destroys, alters, conceals or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case." Defendant asserts the district court was in error in substituting the language "in the trial of another" in section 719.3(1) with "including the defendant." Defendant's theory is her signing Wilkins' name to the traffic citation did not obstruct the prosecution of Wilkins; consequently, what defendant did failed to impact the "trial of another." Defendant argues the insertion of the language in the instruction "including the defendant" was error and her trial attorney should have objected to the insertion, and in failing to do so she was not effective.

The State advances the first paragraph of section 719.3 provides a person can obstruct their own prosecution provided one or both of the acts described in sections 719.3(1) and 719.3(2) have been committed. The State advances this negated defendant's argument she cannot obstruct her own prosecution.

Contrary to defendant's assertions, we find the evidence sufficient to prove defendant furnished false information to be used in the trial of another.

The State next says if the court does not find the statute clear as to whether a person can, under section 719.3, be found guilty for obstructing their own prosecution, it is necessary for us to resort to rules of statutory construction.

Legislative intent is a polestar of statutory construction. *State v. Whetstine*, 315 N.W.2d 758, 760 (Iowa 1982). In construing a statute, we look to the object to be accomplished by the several statutes being interpreted and the conduct sought to be remedied, and adopt the interpretation that will best effectuate the legislature. *See State v. Daniel*, 574 N.W.2d 333, 336 (Iowa 1998). The State further advances where the clear language of the statute indicates it applies to any person, had the legislature intended to limit the people who could be prosecuted, it would not have included the word "any" in the definition of who can commit the crime. The State further argues to read the statute as only applying to the trial of another would render the word "any" in the first paragraph of section 719.3 meaningless.

In interpreting a statute, we avoid statutory construction that renders a part of a statute superfluous or redundant and presume each part of the statute has a purpose. *See State v. Graves*, 491 N.W.2d 780, 782 (Iowa 1992).

However, contrary to the State's assertion, we find no specific language indicating it would apply to a defendant's own trial. We agree with defendant the statute as written does not apply to defendant's own trial and the instruction that it did was not correct. It is reasonable to assume the jury, as instructed, could have found defendant guilty of providing false information intending to obstruct her own prosecution when such actions are not a crime under section 719.3. Consequently, defendant has shown the required prejudice in her trial counsel's failure to object to the language "including the defendant." We reverse and remand for a new trial on this charge.

Defendant secondly contends her trial attorney should have objected to the instruction setting forth the elements of the offense of malicious prosecution. The challenged instruction said:

> 1. On or about the 24th day of September, 1996, the defendant provided information concerning Julie Wilkins to police officer Jeff Williams.
>
> 2. The defendant provided the information with the specific intent to convince or attempt to convince a public official that Julie Wilkins committed the public offense of "speeding" or "no driver's license in possession."
>
> 3. At the time the defendant did not have a reasonable belief that Julie Wilkins committed the offenses of "speeding" or "no driver's license in possession."

Defendant contends the instruction was erroneous and prejudicial. She contends it was defective because it allowed the jury to find her guilty based upon a simple finding she attempted to convince Officer Williams she was Wilkins. She asserts Iowa Code section 720.6 requires additional proof she used Wilkins' name

with the purpose or intent of having Wilkins prosecuted. She additionally asserts the instruction was erroneous because it did not require a finding of malice, an implied element of malicious prosecution.

Iowa Code section 720.6 says a malicious prosecution occurs when:

> A person who causes or attempts to cause another to be indicted or prosecuted for any public offense, having no reasonable grounds for believing that the person committed the offense commits a serious misdemeanor.

Iowa Code § 720.6.

The State argues there is no basis to defendant's contention the instruction the trial court gave changed the meaning of the statute when it included the words "attempt to convince a public official that Julie Wilkins committed [public offenses]" rather than "attempts to cause another to be indicted or prosecuted," as the statute actually reads. The State advances the instruction given was correct because (1) though the language of the instruction does not mirror the statute, it is sufficiently similar to the statute, and (2) the instruction did not require the jury to find defendant acted with specific intent. The State reasons specific intent is a more difficult element to prove and thus the instruction required the State to prove more than it actually had to prove. The State also advances defendant is not able to show prejudice.

We agree with the State the instruction used language sufficiently similar to the statute. We affirm on this issue.

Defendant's third contention is her trial counsel was ineffective in not filing a motion for judgment of acquittal on the forgery, obstructing prosecution, and

malicious prosecution charges. She maintains her conduct did not constitute forgery because she did not intend to defraud or injure anyone by her actions. She argues her conduct did not constitute obstructing prosecution because she did not attempt to obstruct the case of another. She also argues her conduct did not constitute malicious prosecution because she lacked malice and any intent that Wilkins be prosecuted.

Defendant was charged and convicted of forgery under Iowa Code sections 715A.1 and 715A.2(1)(b), which provide:

> 715A.1 Definitions
>
> 1. As used in this chapter the term "writing" includes printing or any other method of recording information, and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.
>
> 2. As used in this chapter the term "credit card" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer and includes a debit card or access device used to engage in an electronic transfer of funds through a satellite terminal as defined in section 527.2, subsection 20.

Iowa Code § 715A.1(1), (2).

> 715A.2 Forgery
>
> 1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that a person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
>
> . . . .
>
> b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

Iowa Code § 715A.2(1)(b).

Defendant, while conceding she signed the name of Julie Wilkins on the traffic citations without Wilkins' authorization, advances a traffic citation is not a writing used with the intent to defraud or injure another and is not an instrument that could subject a person to the charge of forgery. We disagree. There is evidence defendant made a writing purporting to be Wilkins' signature without Wilkins' permission and caused Wilkins to be injured in subjecting her to prosecution for violation of a traffic law. We affirm on this issue.

Defendant contends there was not sufficient evidence to convict her of obstructing prosecution under Iowa Code section 719.3. We disagree. There was sufficient evidence to convict her as to furnishing false information with the intent it be used in the trial of another. We have reversed and ordered a new trial on this charge only because the instruction referred to defendant's own trial.

Defendant contends there was not evidence to support a conviction of malicious prosecution because there was no showing she had malice or she intended Julie Wilkins be prosecuted. We disagree.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED FOR A NEW TRIAL.

No. 97-1748. [9-066] STATE v. HAUT

Appeal from the Iowa District Court for Wapello County, E. Richard Meadows, Jr., Judge. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.** Heard by Sackett, C.J., and Vogel and Zimmer, JJ. Opinion by Sackett, C.J.

(10 pages $4.00)

Defendant was stopped for speeding and allegedly identified herself as another person. She was charged and found guilty of violations of Iowa Code sections 715A.1 and 715A.2(1)(b), 321.560 and 321.561, 719.3, 720.6, and 321A.32. Defendant appeals contending her trial attorney was not effective because (1) she did not object to jury instructions defining obstructing prosecution and malicious prosecution; and (2) she did not move for a judgment of acquittal on the forgery, obstructing prosecution, and malicious prosecution charges. We affirm in part, reverse in part and remand for a new trial. Officer Williams stopped a woman for speeding. The officer asked the driver, later identified as defendant, for her driver's license. She said she did not have her license and identified herself as Julie Wilkins. The officer asked for her social security number and she said she did not know it. When asked for her birth date, she said her birth date was September 18, 1969. The officer verified Wilkins' birthday and issued a citation to a Julie Wilkins for speeding and for not having her driver's license in her possession. The citations were delivered to defendant, who signed as Wilkins. Wilkins was notified her driver's license would be suspended if she did not pay the citations. She contacted the Wapello County Attorney's Office. The charges against Wilkins were either expunged or dismissed. Officer Williams went to defendant's home and he recognized defendant as the person he had cited. Defendant first contends her trial attorney was not effective when she failed to object to the jury instruction defining the crime of obstructing prosecution. Defendant advances under section 719.3(1) a person is guilty of obstructing prosecution if he or she "destroys, alters, conceals or disguises

No. 97-1748. [9-066] STATE v. HAUT (continued)

physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case." Defendant asserts the district court was in error in substituting the language "in the trial of another" with "including the defendant." We find the evidence sufficient to prove defendant furnished false information to be used in the trial of another. The jury could have found defendant guilty of providing false information intending to obstruct her own prosecution when such actions are not a crime under section 719.3. Defendant has shown the required prejudice in her trial counsel's failure to object to the language "including the defendant." We reverse and remand for a new trial on this charge. Defendant contends her trial attorney should have objected to the instruction setting forth the elements of the offense of malicious prosecution. She contends it was defective because it allowed the jury to find her guilty based upon a simple finding she attempted to convince Officer Williams she was Wilkins. We agree with the State the instruction used language sufficiently similar to the statute. We affirm on this issue. Defendant's third contention is her trial counsel was ineffective in not filing a motion for judgment of acquittal on the forgery, obstructing prosecution, and malicious prosecution charges. She maintains her conduct did not constitute forgery. We disagree. Defendant contends there was not sufficient evidence to convict her of obstructing prosecution under Iowa Code section 719.3. We disagree. Defendant contends there was not evidence to support a conviction of malicious prosecution. We disagree.